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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,327	02/17/2004	Yan Wang	944-003.103-2	9418
4955 7590 03/16/2010 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468				
EXAMINER				
CHO, HONG SOL				
ART UNIT		PAPER NUMBER		
2467				
MAIL DATE		DELIVERY MODE		
03/16/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/781,327

**Applicant(s)**

WANG ET AL.

**Examiner**

Hong Cho

**Art Unit**

2467

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 11, 29, 32, 39, 58 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 11, 29, 32, 39, 58 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendment filed on 2/4/2009. Claims 1, 4, 11, 29, 32, 39, 58 and 61 are pending in the instant application.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 1 fails to recite positively the other statutory class (such as a particular apparatus) to which it is tied by identifying the apparatus that accomplishes the method steps, or recite the subject matter that is being transformed by identifying the material that is being changed to a different state. While the claim recites a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. Claims 4, 11 and 58 depend from claim 1 are similarly rejected.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 29, 58 and 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Fiorini et al (US 6760596), hereinafter referred to as Fiorini.

Re claims 1, 29, 58 and 61, Fiorini discloses measuring a carrier-signal-to-interference-signal level (C/I) (*predetermined parameter, signal-to-interference ratio* as in claims 58 and 61) of an uplink as a function of time (*determining that a fluctuation of a predetermined parameter related to a radio link channel transmission exists*, figure2; column 5, lines 45-49). Fiorini discloses comparing a transmit power to two different thresholds (column 5, lines 62-65) and changing uplink-transmit bit rate by changing a spreading factor (column 2, lines 21-23) to keep the transmit power between two thresholds (column 5, line 66 to column 6, line 5) (*changing a spreading factor used for uplink channel spreading to counteract said fluctuation in order to keep a predetermined parameter related to said fluctuation substantially near a threshold value by increasing or decreasing said spreading factor*). Fiorini discloses adjusting a spreading factor to ensure a desired frame or block error rate (*changing the spreading factor if frame or block error rate meets a selected criterion*, column 1, lines 43-52; column 2, lines 21-25).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 4, 11, 32 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiorini in view of Sadri (US 6690652).

Re claims 4, 11, 32 and 39, Fiorini discloses all of the limitations of the base claim, but fails to disclose changing a spreading factor by receiving a spreading factor control signal from the network followed by the mobile station changing the spread factor. Sadri discloses changing a spreading factor (SF) based on a threshold set by the BS or changing transmit power level (transmit power control signal in claims 11 and 39) (column 7, lines 63-65; column 8, lines 6-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Fiorini with the teaching of Sadri in receiving SF or power control signal so that power level for uplink transmission would be controlled by a network or base station.

***Response to Arguments***

8. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection and are not persuasive.

The applicant argues that Fiorini does not disclose determining a frame or block error rate of radio uplink channel. The examiner respectfully disagrees. Fiorini discloses implicitly determining a frame or block error rate of radio uplink channel (column 2, lines 21-25). The applicant further argues that Fiorini does not disclose a dependency of the SF on CIR and frame or block error rate. The examiner respectfully disagrees. Fiorini discloses adjusting a spreading factor to ensure a desired frame or block error rate along with CIR (column 5, line 45 to column 6, line 5).

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj Kumar can be reached on 571-272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Hong Cho/

Primary Examiner, Art Unit 2467